

DATE

Sanettria Glasper Pleasant
Louisiana Department of Transportation and Development
P.O. Box 94245
Baton Rouge, LA 70504

Re: Docket No. 2022-290
Disqualification Plan

Dear Ms. Pleasant:

The Louisiana Board of Ethics, at its May 6, 2022 meeting, considered your request, on behalf of the Louisiana Department of Transportation and Development ("DOTD"), to approve a plan allowing DOTD to hire Preston Brock, the husband of DOTD employee Kimberly Brock, as a Highway Foreman 1 and for Mr. and Mrs. Brock to recuse themselves from any matters relating to their spouses' employment.

FACTS PROVIDED

Kimberly Brock has been employed by DOTD since November 30, 2020, as an Engineer Technician 2 within DOTD District 05, Unit 255, Construction Section. In this position, she does not supervise any employees; however, her duties generally include timekeeping for Units 255 and 570 within District 05.

Kimberly Brock's husband, Preston Brock, is currently a Mobile Equipment Operator 1/Heavy with DOTD District 05, Unit 570. Mr. Brock meets the qualifications to be hired as the Highway Foreman 1 within DOTD District 05, Unit 570, Maintenance Section. In this position, Mr. Brock would not be a supervisor over the Construction Section.

DOTD has submitted a disqualification plan to avoid any potential violation of La. R.S. 42:1112, whereby Mrs. Brock would recuse herself from participating in any transaction or duties involving Preston Brock, including, but not limited to, approving leave, signing performance evaluation documents, and recommending hiring/promotions. Mrs. Brock would also not perform any functional supervision of Mr. Brock at any time, including, but not limited to, determining work assignments, training, reviewing work, and approving work. DOTD Engineering Technician 5, Polly Smith, would perform timekeeping for Mr. Brock. Additionally, Mr. Brock would recuse himself from any transaction or duties involving Kimberly Brock including, but not limited to, approving leave, signing performance evaluation documents, and recommending hiring/promotions. Mr. Brock would also not perform any functional supervision of Mrs. Brock at

any time, including, but not limited to, determining work assignments, training, reviewing work, and approving work. Any such decisions would be handled by Preston Brock's supervisor, Lonnie Green, Parish Highway Maintenance Superintendent.

LAW

La. R.S. 42:1112B(1) states that no public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any member of his immediate family has a substantial economic interest.

La. R.S. 42:1112C allows a disqualification plan to be developed in accordance with rules adopted by the Board to remove a public servant from participating in transactions that would otherwise present violations of Section 1112 of the Code.

La. R.S. 42:1119A states that no member of the immediate family of an agency head shall be employed in his agency.

La. R.S. 42:1102(2)(a)(i) defines "agency" to mean a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. "Agency of the public servant" and "his agency" when used in reference to the agency of a public servant shall mean for public servants in the twenty principal departments of the executive branch of state government, the office in which such public servant carries out his primary responsibilities; ...except that in the case of public servants who are members or employees of a board or commission or who provide staff assistance to a board or commission, it shall mean the board or commission.

La. R.S. 42:1102(3) defines "agency head" to mean the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.

La. R.S. 42:1102(13) defines "immediate family" as the term relates to a public servant to mean his children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, his parents, his spouse, and the parents of his spouse.

La. R.S. 42:1102(15) defines "participate" to mean to take part in or to have responsibility for action of a governmental entity or proceeding, personally, as a public servant of the governmental entity, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty.

La. R.S. 42:1102(18)(a) defines "public employee" to mean any person, whether compensated or not who is: (i) an administrative officer or official of a governmental entity who is not filling an elective office; (ii) appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof; (iii) engaged in the performance of a governmental function; (iv) under the supervision or authority of an elected official or another employee of the governmental entity.

La. R.S. 42:1102(19) defines "public servant" to mean a public employee or elected official.

La. R.S. 42:1102(21) defines "substantial economic interest" as an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons,

except: (a) the interest that the public servant has in his position, office, rank, salary, per diem, or other matter arising solely from his public employment or office; (b) the that an elected official who is elected to a house, body, or authority has in a position or office of such house, body, or authority which is required to be filled by a member of such house, body, or authority by law, legislative rule, or home rule charter, (c) the interest that a person has as a member of the general public.

ANALYSIS

As employees of DOTD, Mr. and Mrs. Brock are both public employees pursuant to La. R.S. 42:1102(18)(a), and are also accordingly public servants pursuant to La. R.S. 42:1102(19). Mrs. Brock is an employee in DOTD District 05 Construction Section, and Mr. Brock would be an employee in DOTD District 05's Maintenance Section. Accordingly, neither Mr. Brock nor Mrs. Brock would be an agency head over their spouse. However, La. R.S. 42:1112B(1) would prohibit Mrs. Brock from participating in timekeeping duties for Mr. Brock.

CONCLUSION

Based on the facts presented, the Board concluded, and instructed me to inform you, that it approved the plan as proposed as it complies with the criteria set forth in Chapter 14 of the Rules for the Board of Ethics.

Changes to the facts as presented may result in a different application of the provisions of the Louisiana Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Louisiana Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions contained in the Louisiana Gaming Control Law. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

Charles E. Reeves, Jr.
For the Board